

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 427-4863

W10a



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Staff: K.Cuffe  
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## REGULAR COASTAL DEVELOPMENT PERMIT

**Application number** ..... 3-04-052

**Applicant**..... Witter Family Trust, Attn Dean & Rebekah F. Witter, III

**Local government** ..... Monterey County

**Project location** ..... 112A Yankee Point Drive, Carmel Area, Monterey County (APN 243-161-017).

**Project description**..... Construction of a one-story, 2,232 square foot single family residence (modular home) with attached 440 sf garage, flagstone patio, concrete driveway and parking area, landscaping (including at least 1500 sf of hardscaping and 700-sf synthetic turf putting green), septic system, drainage system, and extension of existing wood and wire fencing along public access trail between Yankee Point Drive and Malpas Creek Beach.

**Local Approvals** ..... Monterey County Resolution No 04-155 for Variance from 20-foot side-yard setback, and Design Approval (PLN030102)

**File documents**..... Coastal Permit files: P-77-596 (LaMonica), P-80-421 (Schraeder fence), 3-00-020 (after-the-fact CDP for Stackpole fence and landscaping), Carmel Area Land Use Plan.

**Staff recommendation** ..... Approval with Conditions

### Summary of Staff Recommendation

Staff recommends that the Commission **approve** the Coastal Development Permit, subject to conditions included herein and find that the project is in conformance with the Coastal Act. Approval has been conditioned to protect scenic views from Highway One, public access from Yankee Point Drive to Malpas Creek Beach, and potential archeological resources onsite. The project site is located on one of two parcels owned by the Witters that front Yankee Point Drive, in the Carmel Highlands area of Monterey County. The two parcels, one of which is already developed with a single-family dwelling, are located within the scenic viewshed of Highway One, immediately north of Malpas Creek. A coastal access trail, which provides vertical access to Malpas Beach, extends from Yankee Point Drive to the blufftop along the western property boundary and then



**California Coastal Commission**  
**May 2005 Meeting in Palo Alto**  
Staff: K. Cuffe Approved by:

across the southern portion of the subject parcel, where it traverses down the bluff face to the beach. Malpaso Creek Bridge, located southeast of the site, provides coastal views of the ocean, creek and coastal bluffs from Highway One. Malpaso Creek marks the southern limit of the Carmel Land Use Area; the Big Sur Coast Land Use Area begins immediately south of Mal Paso Creek.

This parcel is located in an area of deferred certification, and so remains within the Commission's original jurisdiction, where the Coastal Act is the standard of review. While policies in the County's Carmel Area LUP do not govern development in this area of deferred certification, they do include specific resource protection policies for the Yankee Point Drive area and Carmel Highlands Riviera, and so may serve as guidance to the Commission. Although the Carmel Area LUP does not have a critical viewshed policy, similar to that in Big Sur, with which the Commission is familiar of late, it does require protection of scenic resources located in the public viewshed west of Highway One.

The Coastal Commission and the County have had a long, continuous commitment to preserving scenic resources and coastal access in this area. The Commission has previously required that development adjacent to Malpaso Creek use a "stringline method" to preserve scenic resources and views from Highway One to the coast, beyond existing development. The Yankee Point Drive area is approximately 98% built out, with only about 2 or 3 parcels remaining vacant.

The Commission previously approved development of a residence on the parcel immediately west of the subject site (the Feduniak property) by establishing a stringline, or line of sight, that extends from the south end of the Highway One Bridge over Malpaso Creek to and beyond the seaward extent of other residential development that existed at that time. This stringline method thus established a line of sight to the ocean, south and seaward of which development would be prohibited by means of a scenic easement, in order to preserve views of the coastal bluffs and ocean. The stringline used for the adjacent (Feduniak) parcel was referred to as the "line of sight 'Y'", and the area south and seaward of the "line of sight 'Y'" has been preserved through the recording of a scenic conservation easement, which prohibits development within the scenic preservation area.

The same "line of sight 'Y'" stringline was later applied to the subject parcel, when the previous property owners (Stackpoles) applied for an after-the-fact permit (CDP 3-00-020) to install a 6-foot high metal vertical split rail fence along Yankee Point Drive and a portion of the public accessway that leads to Malpaso Beach, a 4-foot high wood and wire fence along 255 feet of the remaining accessway to the top of the bluff, and landscaping. In that case, the Commission also required that no development be allowed in the scenic preservation area seaward of the line of sight Y other than installation of native drought tolerant landscaping with a maximum height of 4 feet and temporary drip irrigation, to minimize irrigation on the blufftop parcel. And, since the lot had no residence on site at the time, and still provided views from both Highway One and Yankee Point Drive across the parcel to the ocean, the Commission also required that landscaping between the Scenic Preservation area and Yankee Point Drive use drought tolerant, non-invasive native plant species appropriate to the site, and not include any plantings that would substantially block existing views across the parcel.

As required by the Stackpole ATF permit (CDP 3-00-020), an Open Space Deed Restriction was recorded on February 26, 2002, establishing the scenic preservation area on the southwestern corner



of the property, seaward of the “line of sight ‘Y’”, and a 5-foot wide “Old Coast Road Trail” easement. The recorded Open Space Deed Restriction prohibits development in the scenic preservation area as required by CDP 3-00-020.

The current property owners (Witters) are now requesting to develop a one story, 2,232 square-foot single-family dwelling, with attached 440 sf garage, 616 sf patio (with flagstone set in concrete), and landscaping, which includes at least 1,500 sf of additional hardscaping (flagstone set in decomposed granite), and at least 700 sf (approximately 15-foot diameter) synthetic turf putting green, that has already been constructed on the property without benefit of a permit. The project also proposes to extend the existing 4-foot high wood and wire fence that is set 5 feet east of the western property boundary along the existing Old Coast Road trail that serves as a vertical accessway from Yankee Point Drive to Malpasos Beach.

While development of the new house will block ocean views from Yankee Point Drive, the public can walk along the existing trail to the bluff to get views of the blufftop and ocean. The plans show that the proposed house has been sited well landward of the “line of sight ‘Y’” stringline that the Commission has used to permit other development in this area of deferred certification, and so does not extend beyond other residential development permitted by the Commission in this area, and will not block primary public views across the parcel of the blufftop and ocean from Highway One.

However, extension of the fence would require that it be located in the Scenic Preservation Area. Based on the definition of development given in Coastal Act Section 30106 (which includes placement or erection of any solid material or structure), a fence is considered development, and would not be allowed under the existing recorded Open Space Deed Restriction. The applicants have thus requested an amendment to the previous Stackpole permit requirement prohibiting development in the deed restricted scenic preservation area, in order to allow for construction of a 4-foot high open wire fence (with 2x4 top rail and framing) and gates along the landward side of the public accessway that crosses the site, as part of the new residential development proposed as part of this current application.

While a fence by itself would detract from the scenic character of the blufftop parcel, the applicants have indicated that they would be willing to screen any new fencing with vegetation, to obscure the view of the fencing and eliminate the visual impact of such development. If conditioned so that the design, planting and maintenance of the vegetation effectively obscured visibility of the fencing (i.e., so that it was mostly covered/screened by native shrubs and vines, planted in a way so it didn’t just look like a straight line hedge), it would look similar to a bramble of bushes along the edge of the existing trail, and blend in to the character of the setting, thus preserving the open space character of the site. Provided the fence was conditioned to incorporate the integral landscaping into the design, it is possible that such fence would be no more visually obtrusive than similar vegetation along the edge of the trail might appear. Thus a low (no more than 4-foot high), vegetatively screened fence, if adequately designed, screened and maintained, could be found to be consistent with the intent of the restrictions placed on the property by approval of CDP 3-00-020, provided the Commission approves the Witter’s pending amendment to revise the existing deed restriction (amendment application 3-00-020-A1). Installation of the new fencing can not occur however, until the applicant



has accepted and the Executive Director has issued the amended permit (CDP 3-00-020-A1), if approved by the Commission, after recordation with the County of Monterey of a revised deed restriction pursuant to CDP 3-00-020-A1.

Additionally, proposed landscaping plans for that portion of the site outside the Scenic Preservation Area currently include non-native groundcovers (gazania and lantana) on the blufftop, which while drought-tolerant, are not consistent with previous permit requirements that allowed only native plants in this area, and include large areas of gravel and flagstone paving, and a putting green, which are inconsistent with Carmel Area LUP guidance for protecting visual resources in the Yankee Point/Carmel Highlands-Riviera area.

Therefore, in order to protect scenic resources consistent with Coastal Act policies, LCP guidance, and the existing Open Space Deed Restriction, special conditions require that project plans be redesigned to remove the proposed fence extension and gates from the scenic preservation area, and that the landscaping plan be revised to maintain as much of the existing native landscaping as possible on the seaward side of the house, by limiting the amount of new hardscaping, between the house and the scenic preservation area to 850 sf (which would allow for the proposed 620 sf flagstone-and-concrete patio and an additional 230 sf of flagstone and gravel hardscaping), and limiting the putting green to its existing size, location, and use of synthetic turf. Furthermore, the permit has been conditioned to require that low-lying shrubs (with a maximum growth habit of no more than 4-feet high) be planted around the perimeter of the putting green and hardscaped areas, in order to at least partially screen them from view from the Highway One Bridge. All plantings on the site shall use only drought tolerant, non-invasive native plant species indicative of the coastal blufftop setting.

None of the major structural elements of the proposed design, as shown on the project plans dated 7/14/03, would affect physical access along the Old Coast Road trail, which provides vertical access between Yankee Point Drive and Malpas Creek Beach. However, to ensure that shoreline pedestrian access remains available, special conditions require that the location of the western fence line cannot be changed and no gates or other structures that would block public access along the trail may be installed without a new coastal development permit or an amendment to this permit.

The permit has also been conditioned to protect archaeological resources, which exist onsite, outside of the proposed development.

Staff therefore recommends approval of the project with findings that, as conditioned, there would be no adverse impacts to coastal resources or public access and the amendment request is consistent with the Chapter 3 policies of the Coastal Act.

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## 1. Staff Recommendation on Permit

The staff recommends that the Commission, after public hearing, **approve** the proposed permit subject to the standard and special conditions below. Staff recommends a **YES** vote on the following motion:

**Motion.** *I move that the Commission approve the Coastal Development Permit Number 3-MCO-00-020 pursuant to the staff recommendation.*

**Staff Recommendation of Approval.** *Staff recommends a YES vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.*



***Resolution to Approve a Coastal Development Permit.** The Commission hereby approves the coastal development permit on the ground that the development, subject to conditions included herein, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment.*

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## 2. Conditions of Approval

### Standard Conditions

- 1. Notice of Receipt and Acknowledgment.** The permit amendment is not valid and development shall not commence until a copy of the permit amendment, signed by the permittee or authorized agent, acknowledging receipt of the permit amendment and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### Special Conditions

- 1. Condition Compliance for After-the-Fact Construction.** Within 90 days of Commission action on this coastal development permit, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all prior-to-issuance requirements specified in the conditions below. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.
- 2. Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two sets of the following plans to the Executive Director of the Coastal Commission for review and approval. The permittee shall undertake development in accordance with the final plans approved by the Executive Director pursuant to these special conditions.
  - a. Revised Final Site Plans.** The final site plan and elevations shall demonstrate the following:



i. The site plan (labeled Sheet 1, and dated 7/14/03) has been further modified, so that no portion of the proposed fencing is located in the scenic preservation area, as defined by the recorded deed restriction, and shown in Exhibit J, unless allowed pursuant to an approved amendment of the earlier Stackpole permit (CDP 3-00-020). Without such amendment, this permit allows only for a 4-foot high wood and wire fence, designed consistent with Special Condition 2c below, may be located landward of the scenic preservation area.

ii. The septic leachfield area (shown on Sheet 1) has been further modified so that no portion of the septic system leachfield is located in the scenic preservation area, consistent with the revised Septic System Design, prepared by Nolan, Zinn and Associates, dated revised 10/2/04.

**b. Landscaping Plans.** Landscaping plans (dated 7/14/04) shall be revised to show the following:

**i. Landscaping in Area between Scenic Preservation Area and Yankee Point Drive.**

(A) Proposed landscaping maintains as much of the existing native landscaping as possible on the seaward side of the house, by limiting the amount of new hardscaping, between the house and the scenic preservation area to 850 sf (which may include the proposed 620 sf flagstone-and-concrete patio and up to an additional 230 sf of semi-permeable hardscaping).

(B) The putting green constructed on site with synthetic turf, and requiring no irrigation, shall be limited to its existing size (approximately 700 sf) and location, in substantial conformance with landscaping plans dated 7/14/04 submitted as part of the application process for this project. Any change in the type of turf used on the putting green would require an amendment to this permit, however, any turf that would include non-native plant species or additional irrigation is prohibited.

(C) Low-lying shrubs (with a maximum growth habit of no more than 4-feet high) shall be planted around the perimeter of the putting green and hardscaped areas, in order to screen them from view from the Highway One Bridge. If the applicant can not sufficiently screen the putting green as required, they shall be required to remove the putting green turf (taking necessary action to avoid further damage of the site) and to restore the area with native plantings. All plantings on the site shall use only drought tolerant, non-invasive native plant species indicative of the coastal blufftop setting.

(D) The landscaping plans shall specify procedures for erosion control and maintenance of native plant cover; and proposed native plant species for any additional plantings. No interference with public views through the planting of trees or other landscaping shall be allowed. The landscaping plan shall provide for the removal of all non-native invasive plants, include only native, non-invasive, drought tolerant plants suitable to the area's blufftop habitat, and allow only drip irrigation for the first two years following installation to allow the native plants to become established on the site. Any other



surface or subsurface irrigation measures shall not be allowed, and if found to exist on site shall be disconnected and capped. The landscaping plan shall be in sufficient detail to identify the location, species, and size of the proposed native plants and landscaping materials and shall provide that landscaping shall be installed prior to occupancy.

- ii. Landscaping in the Scenic Preservation Area.** Plans shall clearly indicate that no development, as defined in Section 30106 of the Coastal Act, shall occur in the Scenic Preservation Area except for: (1) installation of drought and salt-water resistant, non-invasive native shrubs and grasses with maximum heights of 4 feet or less indicative of the Malpaso Creek coastal terrace area; (2) installation and subsequent removal of a temporary drip irrigation system needed (if any) to establish the approved plantings in the Scenic Preservation Area, as identified on the approved landscaping plans for CDP 3-00-020 for the previous owners; and (3) other minor repair and maintenance activities provided for by the existing Open Space Deed Restriction recorded February 26, 2002, unless otherwise provided for by approval of pending amendment 3-00-020-A1.
- c. Fencing.** Both Site and Landscaping plans shall clearly show the location of any new fencing to be constructed on the subject parcel (APN 243-161-017). New fencing shall be no more than four-feet high, shall be constructed in similar fashion to that currently existing on site (i.e., as an open wire field fence, with 2x4 top rail and framing). Any fencing visible within the public viewshed shall be vegetatively screened, using native plants appropriate to the coastal blufftop setting. Only native vines and shrubs/perennials with a maximum natural growth height of 5 feet or less shall be allowed for screening purposes. New fencing shall not be allowed in the Scenic Preservation area unless specifically allowed for by an approved amendment of the previous Stackpole permit (CDP 3-00-020). Installation of fencing proposed within the Scenic Preservation Area can not occur until the applicant has accepted and the Executive Director has issued the amended permit (CDP 3-00-020-A1), if approved by the Commission, after recordation with the County of Monterey of a revised deed restriction pursuant to CDP 3-00-020-A1. The vegetative screening for any new fencing allowed in the scenic preservation area, pursuant to the revised deed restriction, shall be designed, planted and maintained in such a way as to ensure that the portion of the fence located within the Scenic Preservation area shall visually blend in with the open space, coastal bluff character of the area and not detract from the scenic beauty of the area. Any new fencing to be located along the public accessway that crosses the parcel shall be set at least 3 feet landward of the edge of the trail in order to allow landscape screening, using native plants appropriate to the site, to be planted on both sides of the fencing. Any fencing not consistent with this permit condition shall be required to be removed at the applicants' expense, and enforcement measures may be taken. This permit does not authorize the construction of any additional fencing on the adjacent property currently owned by the Witters (APN 243-161-018).

The Permittee shall undertake development in accordance with the approved Final Plans. Any proposed changes to the approved Final Plans shall be reported to the Executive Director. No changes to the approved Final Plans shall occur without a Commission





amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

3. **Relationship to Previous Permit (CDP 3-00-020).** The previous permit (3-00-020) remains in effect, except as modified by any approved permit amendment, and with the exception that the new site and landscaping plans, as conditioned herein, can supercede the previously approved plans (dated May 24, 2001), provided development authorized by this new permit is designed and implemented in compliance with all conditions contained herein.
4. **Geotechnical Review.** In order to assure that construction activities are consistent with the Geotechnical Report prepared by Rock Solid Engineering, Inc., dated June 14, 2004, the applicant shall contract the services of a qualified geotechnical engineer to implement all of the geotechnical recommendations made therein.
5. **Public Rights.** The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that may exist on the current Assessor Parcel Numbers 243-161-018, 243-161-017, and 243-161-015. The Permittee shall not use this permit as evidence of a waiver of any public rights that may exist on these properties.
6. **Exterior Lighting.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit an exterior lighting plan which shall indicate the location, type and wattage of all light fixtures and include catalogue sheets for each fixture for the review and approval of the Executive Director. All exterior lighting shall be unobtrusive, harmonious with the local area, and constructed or located so that only the intended area is illuminated and off-site glare is fully controlled. Additionally, no artificial lighting shall be directed onto environmentally sensitive habitats, including the shoreline and the adjacent sea within the Monterey Bay National Marine Sanctuary.
7. **Archaeological Resources.** Should archaeological resources be discovered at the project site during any phase of construction, the permittee shall stop work until a mitigation plan, prepared by a qualified professional archaeologist and using accepted scientific techniques, is completed and implemented. Prior to implementation, the mitigation plan shall be submitted for review and approval by the State Historical Preservation Office and for review and approval by the Executive Director of the Commission. The plan shall provide for reasonable mitigation of the archaeological impacts resulting from the development of the site, and shall be fully implemented. A report verifying compliance with this condition shall be submitted to the Executive Director for review and approval, upon completion of the approved mitigation.
8. **Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) has imposed the Special Conditions of this permit as



covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

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### 3. Recommended Findings and Declarations

The Commission finds and declares as follows:

#### A. Project Location and Description

##### Project Location

The project is located at 112A Yankee Point Drive (Assessors Parcel Number 243-161-017) in the Carmel Highlands area of Monterey County (see Exhibit A Regional Location Map, Exhibit B Project Vicinity Map, and Exhibit C Parcel Map). The property is located approximately 4.5 miles south of Carmel, in a residential enclave west of Highway One, between Wildcat Creek and Malpaso Creek.

The subject parcel is located within the Carmel Land Use Plan area, and immediately north of the Big Sur Coast Land Use Plan area, with Malpaso Creek serving as the dividing line between the Carmel and Big Sur Coast planning areas. This portion of the Carmel Highlands area, located west of Highway One, may also be referred to as the Carmel Highlands Riviera.

The subject property is one of two blufftop parcels owned by Mr. And Mrs. Dean Witter (APN 243-161-017 and 243-161-018), located immediately north of Malpaso Creek (see Exhibit C Parcel map), and within the public viewshed visible from the Highway One Bridge over Malpaso Creek (Exhibit D Carmel Area LUP Viewshed Map). The subject parcel (APN 243-161-017) is located between two already developed residential parcels that front the shoreline along Yankee Point Drive. The eastern parcel (APN 243-161-018) owned by the Witter's includes a residence, to which the subject parcel has served as additional yard space. Thus, while the subject parcel is generally vacant, it has been improved by the previous owners (pursuant to CDP 3-00-020; attached as Exhibit L) with native landscaping, stone footpaths, and fencing constructed along the street and along a portion of the coastal access trail that occupies a portion of the subject parcel (see Exhibit G: Previously Approved Landscape plans). The coastal access trail, known as the Old Coast Road Trail since it follows the historic route of the Old Coast Road, occupies a 5-foot wide right-of-way along the western property line, and extends south from Yankee Point Drive to the top of the bluff, and then



crosses the southwestern corner of the subject property, as it heads eastward and down the bluff face to reach Malpaso Creek Beach<sup>1</sup> (see Exhibit B: Vicinity Map and Exhibit C: Parcel Map).

Although Monterey County has a certified local coastal program, the subject parcel is one of five residential parcels located in an area of deferred certification, due to public access issues that were unresolved at the time of certification. Therefore, the Coastal Commission retains coastal permit jurisdiction over this area of deferred certification, and over the proposed project. Thus the standard of review for coastal development permits in this area is the Coastal Act. While policies in the County's Carmel Area LUP do not govern development in this area of deferred certification, they do include specific resource protection policies for the Yankee Point Drive area and Carmel Highlands Riviera, and so may serve as guidance to the Commission.

### Project Description

The project involves development of a one story, 2,232 square-foot single-family dwelling (modular home), with attached 440 sf garage, 620 sf patio (with flagstone set in concrete), and landscaping, which includes at least 1,500 sf of additional hardscaping (flagstone set in decomposed granite), and at least 700 sf (roughly 15-foot diameter) synthetic turf putting green, that has already been constructed on the property without benefit of a permit (see Exhibit E: Site Plans and Exhibit F: Proposed Landscape Plan).

Although the parcel is located in an area of deferred certification, and so not part of the certified Local Coastal Plan (LCP), the County's zoning of the parcel is "LDR/1-D [20][CZ]" or Low Density Residential, 1 acre per unit, in a design control district of the coastal zone, which has a maximum structural height limit of 20 feet. The subject parcel is 0.65 acres in size (or 28,500 sf), and so is a legal nonconforming lot. The residence will have a maximum height of 20 feet above existing natural grade. The modular home will be set on the existing grade, so no grading is proposed. However, the proposed plans require that much of the native plant landscaping put in by the previous owners be removed for construction of the proposed new development (residence, garage, driveway, patio, additional hardscaping, and putting green). Residential development of the site also includes installation of septic system, and drainage improvements to collect surface runoff (from the roof, driveway, and patio areas), and direct it away from the coastal bluff and toward the street where it can be discharged into the existing storm-water system.

The project also proposes to extend the existing 4-foot high wood and wire fence that is set 5 feet east of the western property boundary along the existing Old Coast Road trail that provides vertical access from Yankee Point Drive to Malpaso Creek Beach. As shown on the plans (Exhibit E), a 4-foot high wood-and-wire fence extends most of the length along the public accessway (previous permit allowed for 225 foot long fence), along the west side of the subject parcel 243-161-017. The fencing has been placed five feet east of the western property boundary, which, along with a 5-foot dedicated easement on the adjoining parcel (APN 243-161-015), provides a 10-foot wide accessway

<sup>1</sup> The Old Coast Road trail is actually approximately 10-feet wide between Yankee Point Drive and the blufftop, occupying a 5-foot wide strip located along the western edge of the subject property (APN 243-161-017) and a 5-foot wide strip along the eastern edge of the adjacent (Blair/Feduniak) parcel (APN 243-161-015)



to the blufftop. The trail narrows down to five feet wide as it crosses the southwestern corner of the property. The current project proposes extending this wood and wire fencing along the remaining length of the trail where it would extend to the blufftop, and then across the southern portion of the property, where the trail traverses the site and slopes down across the bluff face to reach Malpasos Creek Beach. As shown on the site plans, the fence would include new access gates along the western fence line and at the southern property boundary, where the Old Coast Road trail exits the parcel.

## C. Coastal Act Issues

### 1. After-the-Fact Development

The previous property owners (Stackpole) installed fencing along the front of the property and across the trail entrance, blocking the public accessway, and also landscaped the subject parcel, all without benefit of a permit and in violation of Coastal Act resource protection and public access policies. To resolve the violation, the Commission required the applicants to obtain an after-the-fact coastal development permit (CDP 3-00-020) for the fence and landscaping. The Commission ultimately approved the project and issued a permit (see Exhibit L) with conditions that prohibited fencing or any other structures blocking the Malpasos Creek Beach accessway, required recordation of a deed restriction for a scenic preservation area on the southwestern corner of the parcel that lies seaward of the “line of sight ‘Y’” stringline (see Exhibit H), allowed fencing along the street front and along the access trail outside of the scenic preservation area, and limited landscaping on the site to drought tolerant, non-invasive species appropriate to the site. The approved landscaping plan for CDP 3-00-020 thus includes only native plants, chipped bark mulch, decomposed granite footpaths, and three small areas with stone surfacing.

While much of the landscaping approved by this earlier permit remains in place, aerial photos show that a portion of the site has been modified from the approved plans and now includes a putting green, which was installed without the benefit of a permit (see Exhibit I). Therefore in addition to the current application for the new single-family dwelling, garage, patio, drainage improvements and septic system, the current application also seeks after-the-fact approval of the putting green, which is approximately 700 sf in area, and has been constructed using synthetic turf that requires no irrigation.

Review of this permit request does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred. The Commission acts on this application without prejudice and acts on it as if the existing development had not previously occurred. However, since development has occurred in violation of the Coastal Act, conditions are also included to resolve the violation through mitigating impacts that have occurred.

### 2. Development

The project proposes to construct a new residential structure on an existing vacant lot in a residential enclave located in the Yankee Point area, also known as the Carmel Highlands Riviera.



The Coastal Act requires that new development be located in existing developed areas able to accommodate it by means of existing infrastructure and utilities.

Coastal Act Section 30250 requires that:

*(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it ...*

While the Carmel Area LUP is not the standard of review (because this parcel is in an area of deferred certification), its policies can, nonetheless, serve as guidance in this area.

The Carmel LUP requires that

*4.3.1. Objectives for Different Planning Units of Carmel Area. Existing Developed Areas. It is the County's objective to promote the continued "infilling" of vacant parcels of record in all subdivided areas, namely, Carmel Woods, Hatton Fields, ... Carmel Highlands, and the Riviera. Existing recreational and visitor-serving facilities located within the residential communities are considered desirable uses and should be continued where potential or existing conflicts with the surrounding residential community can be adequately mitigated.*

*...4.4.2.6. New...development of undeveloped parcels south of the Carmel River shall be permitted only if the following principal criteria can be fully met in addition to other applicable policies of this plan:*

- *Structures can be located, designed or screened to be outside the public viewshed.*
- *...Roads and structures can be sited to avoid disruption or degradation of riparian corridors and other sensitive plant and wildlife habitats*
- *...Development would be in keeping with the present rural character of the area*
- *...Adequate sewer service or adequate sewage disposal area that qualifies under county standards is available*
- *Adequate water supply is available.*

*4.4.3.E.1 (Specific Policies for Residential Development) Infilling of existing residential areas according to the resource and scenic protection standards set forth in this plan is preferred over new residential development elsewhere.*

*4.4..3.E.5 Low-density residential development shall generally be located in rural areas where an essentially residential character exists – i.e., the Carmel Highlands-Riviera. Vacant lots in this area should continue to be developed to the extent that site and resource protection constraints allow. Housing densities and lot sizes shall be consistent with the ability of septic systems to dispose of waste without contamination of coastal streams or creation of hazards to public health...*



*4.4.3.E.11. Existing parcels less than the minimum parcel size required for new subdivisions are considered legal parcels and are suitable for development of those uses consistent with the land use plan designation, provided that all resource protection policies can be fully satisfied.*

The project site is an existing, legal lot of record in the Carmel Highlands-Riviera, designated for residential use (low-density residential 1-unit per acre, design control, max height limit of 20 feet). The lot is the last vacant lot located in this residential enclave west of Highway One, where adequate infrastructure, including roads, water and electricity already exists. County approvals for the project indicate that adequate areas exists for septic system to dispose of waste, outboard of the 50 foot bluff top setback and with the ability for a future 100% leachfield expansion area if necessary. Water will be served to the property by the Carmel Riviera Mutual water company (pers comm. Pia Garnout, Carmel Lahaina Utility Services, operations and management firm for CRMWC, 1/26/05). Thus the project proposes new residential development in an existing developed area, where infill development is allowed, and that is able to accommodate it, and so is consistent with Coastal Act policy 30250.

### 3. Scenic Resources

The subject parcel is located in the coastal viewshed as seen from Highway One (see Exhibit D: Carmel Area LUP Viewshed Map). Some elements of the proposed development on the lot will be visible from Highway One at the Malpasos Creek Bridge (e.g., portions of the proposed hardscaping, putting green and wood and wire fence extension), and may affect scenic views of the coast and shoreline in this area. Thus the main issue involved with this permit application is protection of public coastal views and scenic resources.

Coastal Act section 30251 governs:

**Section 30251.** *The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

Although not the standard of review, the Carmel Area Land Use Plan (LUP) offers guidance with regards to visual resources. Relevant scenic resource protection policies of the Carmel LUP require<sup>2</sup> that:

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<sup>2</sup> These policies are cited for illustrative purposes. They are certified as applying to the Carmel Area, but not to the subject sites, because the subject parcel is in an area of deferred certification, due to unresolved public access issues.



2.2.3.1. *The design and siting of structures, whether residential, commercial, agricultural, or public, and the access roads thereto, **shall not detract from the natural beauty of the scenic shoreline** and the undeveloped ridgelines and slopes in the public viewshed.*

2.2.3.4. *The portion of a parcel least visible from public viewpoints and corridors shall be considered the most appropriate site for the location of new structures. Consistency with other plan policies must be considered in determining appropriate siting.*

2.2.3.6. *Structures shall be subordinate to and blended into the environment, using appropriate materials that will achieve that effect. Where necessary, modification of plans shall be required for siting, structural design, color, texture, building materials, access and screening.*

2.2.3.8. *Landscape screening and restoration shall consist of plant and tree species consistent with the surrounding vegetation. Screening on open grassy slopes and ridges should be avoided.*

2.2.3.9. *Landowners will be encouraged to donate scenic easements to an appropriate agency or nonprofit organization over portions of their land in the viewshed, or, where easements already exist, to continue this protection. **Viewshed land protected by scenic easements required pursuant to Coastal Permits shall be permanently free of structural development unless specifically permitted at the time of granting the easement.***

2.2.4.10. *The following siting and design control measures shall be applied to new development to ensure protection of the Carmel area's scenic resources, including shoreline and ocean views:...*

c. *Structures located in the viewshed shall be designed so that they blend into the site and surroundings. The exterior of buildings must give the general appearance of natural materials (e.g., buildings should be of weathered wood or painted in "earth" tones). The height and bulk of buildings shall be modified as necessary to protect the viewshed.*

d. *Exterior lighting shall be adequately shielded or shall be designed at near-ground level and directed downwards to reduce its long-range visibility.*

e. *Existing trees and other native vegetation should be retained to the maximum extent possible both during the construction process and after the development is completed. Landscape screening may be used wherever a moderate extension of native forested and chaparral areas is appropriate. **All new landscaping must be compatible with the scenic character of the area and should retain existing shoreline and ocean views.***

2.2.5.2 *....To ensure that new development in the Yankee Point area remains subordinate to the visual resources of the area, and to ensure that visual access from Highway 1, Yankee Point Drive, and Mal Paso Road is protected, the height limit in the Yankee Point area of Carmel Highlands-Riviera, for all properties seaward of Yankee Point Drive, and for properties with frontage along the east right of way line of Yankee Point Drive that face such*



*properties seaward of Yankee Point Drive, shall be 20 feet. The height limit for all other properties in the area shall be 26 feet.*

*In addition to such height limits, new development shall be subject to design guidelines to be adopted by the Planning Commission for the Yankee Point area. Such guidelines shall affect the visibility and design of structures in a manner so as to **preserve and protect, to the maximum extent feasible, public visual resources and access described herein.***

The applicants' site is one of the three lots located seaward of Yankee Point Drive that front Malpas Creek and are located within the public viewshed mapped by the County LCP (as shown in Exhibit D; see also Exhibit K). The shoreline along Malpas Creek is an area where special care has been undertaken to avoid development that could otherwise impact public views of the coast and ocean available from Highway One, across the Malpas Creek Bridge, and the Coastal Commission and the County have had a long, continuous commitment to preserving the scenic resources in this area, pursuant to the Coastal Act directives of Section 30251.

In order to preserve views of the coastal bluffs and ocean visible from the Highway One Bridge in this area of deferred certification, the Commission has consistently used the "stringline method" to establish a line of sight between the Highway One Bridge over Malpas Creek and the seaward extent of other pre-existing development on the blufftop north of Malpas Creek, south and seaward of which development is prohibited through conditions that require the recordation of a scenic easement (see Exhibit H). The Commission also conditioned development on these residential parcels to retain native bluff-top vegetation, that new landscaping use only native, drought-tolerant species suitable to the site in order to maintain the scenic character of the area and minimize irrigation on the blufftop, and to restrict fencing and landscaping impacts within the viewshed.

The stringline method has thus been applied on all five residential parcels located in the area of deferred certification, including the Blair (now Feduniak) residence located on the adjacent parcel west of the subject site, approved in July 1986, and most recently for after-the-fact approval of fencing and landscaping installed on the subject parcel by the previous property owners (Stackpole) in June 2001. The stringline used in these earlier coastal development permits was established as the line of sight (referred to as the "line of sight 'Y'") between the southern end of the Malpas Creek Bridge, and the seaward extent of pre-existing residential development on the blufftop north of Malpas Creek (please see Exhibits H).

The same "line of sight 'Y'" stringline was used on the subject parcel, to resolve the after the fact development that had occurred on site (as described above). In that case, the Commission prohibited fencing or any other structures blocking the Malpas Creek Beach accessway, required dedication of a scenic preservation area across the southwestern corner of the parcel, south and seaward of the "line of sight 'Y'", and prohibited development in the scenic preservation area other than installation of native drought tolerant landscaping with a maximum height of 4 feet and temporary drip irrigation, in order to protect the scenic character of the area and to minimize irrigation on the blufftop parcel.





Additionally, since the lot had no residence on site at the time, and still provided views from both Highway One and Yankee Point Drive across the parcel to the ocean, the Commission specifically required that landscaping already installed between the Scenic Preservation Area and Yankee Point Drive be modified as necessary to use only drought tolerant, non-invasive native plant species appropriate to the site, and not include any plantings that would substantially block existing views across the parcel. To minimize visual impacts in the viewshed, the Commission also recommended that the proposed wood and wire fence not extend into the Scenic Preservation Area. The landscaping plans were thus revised to show use of native plants that would not block views and that all fencing proposed to be located in the Scenic Preservation Area had been removed from that area, consistent with visual resource protection policies (see Exhibit G: Previously Approved (Stackpole) Landscape Plans, and Exhibit K: Photos of site).

As required by the Stackpole ATF permit, an Open Space Deed Restriction was recorded on February 26, 2002, establishing the Scenic Preservation Area on the southwestern corner of the property, seaward of the “line of sight ‘Y’”, and a 5-foot wide “Old Coast Road Trail” easement (see Exhibit J). Consistent with the requirements of CDP 3-00-020, the recorded Open Space Deed restriction prohibits development in the Scenic Preservation Area (as shown in Exhibit J) except for (1) installation of drought and salt-water resistant, non-invasive native shrubs and grasses with maximum heights of 4 feet or less indicative of the Malpasos Creek coastal terrace area, (2) installation and subsequent removal of a temporary drip irrigation system needed (if any) to establish the approved plantings in the Scenic Preservation Area, as identified on the approved landscaping plans, and (3) other minor repair and maintenance activities provided for by the existing Open Space Deed Restriction.

As described previously, the current property owners (Witter) are now requesting to develop a one story, 2,232 square-foot single-family dwelling, with attached 440 sf garage, 620 sf patio (with flagstone set in concrete), and landscaping, which includes at least 1,500 sf of additional hardscaping (flagstone set in decomposed granite), and at least 700 sf (roughly 15-foot diameter) putting green, that has already been constructed on the property without benefit of a permit. The project also proposes to extend the existing 4-foot high wood and wire fence that is set 5 feet east of the western property boundary along the existing Old Coast Road trail that serves as a vertical accessway from Yankee Point Drive to Malpasos Beach.

While development of any new house would block ocean views from Yankee Point, the proposed house has been sited in the least visible location on the parcel, relative to the main public views taken from the Highway One Bridge over Malpasos Creek. The proposed house has also been sited well landward of the “line of sight ‘Y’” stringline, and so does not block views of the ocean or blufftop from Highway One beyond any other previously existing development. However, proposed extension of the fence would require that it be located in the scenic preservation area, which, as described above, is prohibited by the existing Open Space Deed restriction.<sup>3</sup>

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<sup>3</sup> Based on the definition of development given in Coastal Act Section 30106 (which includes placement or erection of any solid material or structure), a fence is considered development, and thus would not be allowed within the scenic preservation area.



The applicants have thus requested an amendment to the previous Stackpole permit requirement prohibiting development in the deed restricted scenic preservation area, in order to allow for construction of a 4-foot high open wire fence (with 2x4 top rail and framing) and gates along the landward side of the public accessway that crosses the site, as part of the new residential development proposed as part of this current application.

While a fence by itself would detract from the scenic character of the blufftop parcel, the applicants have indicated that they would be willing to screen any new fencing with vegetation, to obscure the view of the fencing and eliminate the visual impact of such development. If conditioned so that the design, planting and maintenance of the vegetation effectively obscured visibility of the fencing (i.e., so that it was mostly covered/screened by native shrubs and vines, planted in a way so it didn't just look like a straight line hedge), it would look similar to a bramble of bushes along the edge of the existing trail, and blend in to the character of the setting, thus preserving the open space character of the site. Provided the fence was conditioned to incorporate the integral landscaping into the design, it is possible that such fence would be no more obtrusive than similar vegetation along the edge of the trail might appear. Thus a low (no more than 4-foot high), vegetatively screened fence, if adequately designed, screened and maintained, could be found to be consistent with the intent of the restrictions placed on the property by approval of CDP 3-00-020, provided the Commission approves the Witter's pending amendment to revise the existing deed restriction (amendment application 3-00-020-A1). Installation of the new fencing can not occur however, until the applicant has accepted the amended permit (CDP 3-00-020-A1), if approved by the Commission, and has complied with the conditions of that permit, and provides evidence that the revised deed restriction has been amended pursuant to CDP 3-00-020-A1 and recorded with the County of Monterey.

Additionally, while the proposed landscaping plan (dated 7/14/04; see Exhibit F) retains all of the existing native vegetation located within the Scenic Preservation Area, construction of the house, driveway, patio, putting green and installation of proposed landscaping and additional hardscaping would require removal of much of the existing native landscaping required by CDP 3-00-020 and installed by the previous owners between Yankee Point Drive and the Scenic Preservation Area. The proposed landscaping plan for the area between Yankee Point Drive and the Scenic Preservation Area does incorporate native plants into the design, and includes non-native groundcovers (e.g., gazania and lantana) on the blufftop, which while drought-tolerant, are not consistent with previous permit requirements that allow only native plants in this area, and are not consistent with LCP guidelines, e.g., Carmel LUP Policy 2.2.3.10.e, which requires that native vegetation be retained to the maximum extent possible, and that all new landscaping must be compatible with the scenic character of the area.

The proposed landscape plan (in Exhibit F) includes large areas of gravel and flagstone paving, and a putting green made of synthetic turf, which, while landward of the scenic preservation area, are still located in the viewshed and so would remain partly visible from the Highway One Bridge across Malpas Creek. While these hardscaping areas help to minimize irrigation on the blufftop, they also require the removal of a large area of existing native landscaping, and replace it with features that would stand out rather than blend in to the surrounding environment and so detract



from the natural beauty and scenic character of the coastal bluff and shoreline. Again, such development would be inconsistent with LCP guidelines as described above.

Therefore, in order to protect scenic resources consistent with Coastal Act policies, LUP guidance, and the existing Open Space Deed Restriction, special conditions of this permit require that project plans be redesigned to remove the proposed fence extension and gates from the scenic preservation area, unless allowed pursuant to an approved amendment of the earlier Stackpole permit (CDP 3-00-020). Without such amendment, this permit allows only for a 4-foot high wood and wire fence, to be located landward of the scenic preservation area, and requires that any such fence include landscape screening designed, planted and maintained in such a way as to blend in with the open space character of the blufftop parcel, similar to that described above, and consistent with Special Condition 2c.

Additionally, in order to maintain the scenic character of the coastal blufftop consistent with LCP guidance for this area, and to provide a transition between the native blufftop setting and the residential use on site, special conditions require that the landscaping plan be revised to maintain as much of the existing native landscaping as possible on the seaward side of the house. This can be achieved by limiting the amount of new hardscaping, between the house and the scenic preservation area to 850 sf (which would allow for the proposed 620 sf flagstone-and-concrete patio and an additional 230 sf of flagstone and gravel hardscaping), and limiting the putting green to its existing size, location, and use of synthetic turf. Furthermore, because a putting green is not consistent with the natural setting of the coastal blufftop, the permit has been conditioned to require that low-lying shrubs (with a maximum growth habit of no more than 4-feet high) be planted around the perimeter of the putting green and hardscaped areas, in order to at least partially screen these features from view from the Highway One Bridge. If the applicant cannot sufficiently screen the putting green as required, they shall be required to remove the putting green turf (taking necessary action to avoid further damage of the site) and to restore the area with native plantings. All plantings on the site shall use only drought tolerant, non-invasive native plant species indicative of the coastal blufftop setting.

Thus, only as conditioned, can the project be found consistent with the local LCP policies for development in the public viewshed and is consistent with Coastal Act Section 30251 protecting scenic and visual resources.

### 3. Public Recreation and Access

Coastal Act § 30604(c) requires that every coastal development permit issued for new development between the nearest public road and the sea “shall include a specific finding that the development is in conformity with the public access and recreation policies of [Coastal Act] Chapter 3.”

Coastal Act policies require that the public access to the sea and coastal recreation be maximized consistent with public safety, resource protection and private property rights. The Coastal Act protects public access to the sea and coastal recreation with the following policies:



**Section 30210.** *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

**Section 30211.** *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

**Section 30212** (a) *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) Adequate access exists nearby...*

**Section 30214.**

(a) *The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:*

(1) *Topographic and geologic site characteristics.*

(2) *The capacity of the site to sustain use and at what level of intensity.*

(3) *The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.*

(4) *The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*

(b) *It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.*

Again, since the project is located in an area of deferred certification, the Coastal Act is the standard of review; however, the Carmel LUP provides helpful guidance for this area of the coast. Relevant public access requirements for the Carmel Highlands-Riviera area include the following:

**5.3.1 Key Policy.** *Public access shall be protected and provided where consistent with public safety needs and the need to protect the rights of private property owners and natural resource areas from overuse.*



*5.3.2.5. Bluff-top access and lateral access along or near the shoreline is appropriate along the coast. These types of access shall be protected for long-term public use, subject to adequate management programs.*

*5.3.3.5.a. New development shall not encroach on well-established accessways nor preclude future provision of access. New structures shall be set back and buffered from access paths to prevent use conflicts.*

The project is located west of Highway One and seaward of Yankee Point Drive, and so is located between the nearest public road and the sea. Public access to the shoreline at Malpaso Creek Beach is currently provided along a path that follows the historic route of the Old Coast Road (see Exhibit I and K). This public access extends south from Yankee Point Drive across the bluff top, and then bends eastward and down the face of the bluff to reach Malpaso Creek Beach. The trail is approximately 10 feet wide between Yankee Point Drive and the blufftop, occupying a 5-foot wide strip located along the western edge of the subject parcel (243-161-017) and a 5-foot wide strip along the eastern edge of the adjacent (Blair/Feduniak) parcel (243-161-015), and then narrows to 5 feet wide where it bends east across the subject property and drops down the face of the bluff to reach Malpaso Creek Beach. The Malpaso Creek Beach accessway (also referred to as the Old Coast Road Trail) on the adjacent (Blair/Feduniak) parcel has been protected through the recording of an irrevocable offer to dedicate vertical coastal access to Malpaso Beach. Once the OTD is accepted (expires in 2009), this vertical accessway on the adjacent parcel will be permanently protected.

An Open Space Deed Restriction was recorded on the subject parcel on February 26, 2002, which included recordation of a 5-foot wide trail along the western property boundary and across the southwestern corner of the parcel, which provides vertical access between Yankee Pint Drive and Malpaso Creek Beach along the Old Coast Road Trail (see Exhibit J). As provided for in the Open Space Deed Restriction, the only development allowed in the Old Coast Road Trail easement is the posting of a recorded Trail Usage Notice, which indicates that the public has a right to pass on the existing trail by permission, subject to control of owner. The notice also includes conditions that limit the right to pass to the existing trail and beach and indicates that trespassing off path would be vigorously prosecuted; requires users to keep noise to a minimum in respect of property owners; and specifies that the right to pass is for pedestrian use only.

As required by the existing Open Space Deed Restriction, the Old Coast Road Trail area shall be kept free of structures that could hinder the ability of the public to use the trail access. No development as defined in Section 30106 of the Coastal Act, including but not limited to gates, fences, signs, hedges, or plants, shall occur in the existing trail area except for the previously approved Trail Usage Notice. As such, the location of the western fence line cannot be changed and no gates or other structures that would block public access along the trail can be installed without a new coastal development permit or an amendment to this permit.

The current plans for the proposed development (dated 7/14/03; see Exhibits E and F) continue to use the existing western fence line (which is set 5 feet in from the western property boundary) to enclose their property. The plans also identify the existing beach access trail across the property,



and specifically note the 5-foot wide right-of-way for the existing beach access trail across the subject parcel. None of the major structural elements of the proposed design, as shown on the project plans dated 7/14/03, would affect physical access along this trail. However, to ensure that shoreline pedestrian access remains available, special conditions require that the location of the western fence line cannot be changed and no gates or other structures that would block public access along the trail may be installed without a new coastal development permit or an amendment to this permit.

The Commission notes that the Coastal Act allows restrictions on access where it is shown to be inconsistent with public safety or the protection of fragile coastal resources. The County local coastal program, which remains uncertified for this area and hence not applicable, has a general provision requiring access management plans for accessways to be open to the public. In the future, as part of certification of the LCP for this area, or as part of a public agency accepting the offer to dedicate on the adjacent parcel (the Coastal Conservancy has been authorized to accept, but has not yet done so); and/or as part of a future offer to dedicate the trail on the subject parcel to the public, a reevaluation of possible limitations on the times that public access is allowed may be appropriate. For now, however, this coastal permit simply seeks to preserve the status quo of an open, unrestricted historic trail (once the County's original coast road). As so conditioned, the proposed project is consistent with Section 30604 and the cited public access policies of the Coastal Act.

Also, as noted, the proposed project site is in an area of deferred certification. The Coastal Commission found the public access provisions (and lack thereof) of the *Carmel Area Land Use Plan* inconsistent with the Coastal Act and thus did not approve the LUP as applying to this subject enclave at Malpasos Beach. It is thus necessary at a minimum to preserve the existing access opportunities that have been available to the public in this (and any) coastal permit application so as to avoid prejudicing completion of the LCP. As conditioned to do so, the proposed project will not prejudice completion of a local coastal program for this area of deferred certification that is consistent with the Coastal Act.

#### 4. Archeological Resources

Section 30244 of the Coastal Act states:

*Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.*

The Carmel LUP also requires that

*2.8.3.4. When developments are proposed for parcels where archaeological or other cultural sites are located, project design shall be required which avoids or substantially minimizes impacts to such cultural sites. To this end, emphasis should be placed on preserving the entire site rather than on excavation of the resource, particularly where the site has potential religious significance.*



*2.8.4.6. When other site planning constraints do not permit avoidance of construction on archaeological or other types of a cultural sites, adequate preservation measures shall be required. Mitigation shall be designed in accord with guidelines of the State Office of Historic Preservation and the State of California Native American Heritage Commission.*

As a result of the previous permit experience on the adjacent (Blair/Feduniak) parcel to the west, and the subject site (as part of the fencing and landscaping performed by the previous owners) archaeologically sensitive resources are known to be located on the adjacent parcel to the west (APN 243-161-015), as well as on the subject site, itself.

In response to questions about whether the landscaping and fencing installed by the previous owners had impacted existing archaeological resources located on site, Mr. Gary Breschini, a qualified archaeological consultant, submitted a letter (dated March 18, 2001), which stated that while the subject parcel contains a portion of an archaeological site (CA-MNT-95), the archaeological site is located at the extreme southern end of the parcel. The letter also stated that while the previous owners had installed landscaping along the fence line near the western property boundary, an archaeological evaluation of the site had been conducted and it appeared that no damage had occurred to the archaeological resources located on site. The archaeological consultant further indicated (pers. comm. 5/22/01) that the extent of the archaeological site was limited to a small portion of the property outside the area of construction activities associated with the landscaping installed by the previous owners. Since the current project, as conditioned, will not include any development in the area referenced by the archaeological consultant, it is expected that the project as conditioned will not have any impacts on archaeological resources on site.

However, since the proposed development includes installation of a new septic system, which will involve minor excavation, it is possible that this activity may disturb additional, as-yet undiscovered archaeological resources. This permit has, therefore, been conditioned to require that should archaeological resources be discovered at the project site during any phase of construction allowed by this permit, work will be halted within 150 feet of the find until it can be evaluated by a qualified professional archaeologist, and a mitigation plan developed if the find is deemed significant.

Therefore, as conditioned to protect archaeological resources that exist or may be found to exist onsite, the project is consistent with Coastal Act policy 30244.



#### D. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect that the activity may have on the environment. The Secretary for Resources has certified the Coastal Commission's review and analysis of land use proposals as being the functional equivalent of environmental review under CEQA. Accordingly, the Commission finds that as conditioned the proposed project will not have significant adverse effects on the environment within the meaning of CEQA; that there are no feasible alternatives that would significantly reduce any potential adverse effects; and, accordingly, the proposal, as conditioned, is in conformance with CEQA requirements.

